



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
WASHINGTON HABITAT BRANCH OFFICE
510 Desmond Drive SE/Suite 103
LACEY, WASHINGTON 98503

September 18, 2003

TO: D. Robert Lohn, Regional Administrator

THROUGH: Michael R. Crouse, Assistant Regional Administrator, Habitat
Conservation Division *MRC*

FROM: Steven W. Landino, Washington State Director, Washington Habitat
Branch *SwL*

SUBJECT: Permit Amendment for the City of Seattle's Cedar River Habitat
Conservation Plan (Incidental Take Permit No. 1235)

This memorandum transmits the proposed Permit Amendment requested by the City of Seattle, by their letter received August 26, 2003. The City's letter also modifies their Cedar River Habitat Conservation Plan (HCP) to add Fish Trapping and Handling Guidelines to section 4.3.3 of the HCP. A separate Biological Opinion and section 10(a)(2)(B) Findings, attached, supports the decision by you whether to amend the City's Permit. The Opinion and Findings, and Permit incorporate suggestions made by General Counsel Northwest (Melanie Rowland). In addition, the Permit text has been upgraded to include the current Director of the Seattle Public Utility (SPU).

On April 21, 2000, NOAA Fisheries issued Incidental Take Permit Number 1235 to the City of Seattle, based on an extensive disclosure of environmental effects under the National Environmental Policy Act (NEPA) and the City's HCP. While the HCP envisioned that fisheries research would occur in association with adult fish passage, details of how the SPU trained biologists would trap and handle were not developed when the HCP was signed and the Permit issued April 2000. The NEPA documents disclosed the idea of salmon research associated with the new fish ladder, so no new NEPA is triggered at this time. The only ESA-listed salmon on the Permit is Puget Sound (PS) chinook salmon (*Oncorhynchus tshawytscha*).

The SPU has recently been asked by researchers at the University of Washington to arrange to collect DNA and other biological information from immigrating adult salmon at the newly constructed fish ladder at Landsburg, Cedar River Mile 21.8. Collected information will be used to see how well intended fish passage restoration meets the HCP goals, and perhaps improve management of chinook in the Cedar River and Lake Washington basin. In addition, population information is expected to guide recolonization efforts in other basins. Trapping and handling of fish was not included in the original Permit, so the attached consultation and findings provides the biological analysis that supports an amendment to the Permit. The Opinion would be revisited in five years in order to adaptively manage these operations.



Therefore, I recommend that you sign the attached Permit Amendment and forward the attached Permit Amendment and cover letter to the City of Seattle.

If you have any questions, please contact Matt Longenbaugh of the Washington Habitat Branch at (360) 753-7761 or matthew.longenbaugh@noaa.gov.

Attachments

cc: Melanie Rowland, GCNW



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

September 26, 2003

Chuck Clarke, Director
Seattle Public Utilities
710 Second Avenue
Seattle, Washington 98104

Dear Mr Clarke:

Enclosed is Permit 1235, amended, issued to the City of Seattle - Seattle Public Utilities (City) under the authority of Section 10 of the Endangered Species Act (ESA). As the City requested by letter from Cyndy Holtz, received August 26, 2003, Permit 1235 has been amended to authorize take of threatened Puget Sound (PS) chinook associated with trapping and handling adult chinook salmon.

NOAA's National Marine Fisheries Service (NOAA Fisheries) has determined that if City trapping and handling activities are conducted as described in section 4.3.3 of the Cedar River Watershed Habitat Conservation Plan (HCP), and in compliance with the terms and conditions of the Implementing Agreement (IA) and the Permit, the expected take will not appreciably reduce the likelihood of survival or recovery of the PS chinook Evolutionarily Significant Unit (ESU).

The authorization granted by this Permit is subject to full and complete compliance with, and implementation of, the HCP and IA. The City's letter requesting the Permit Amendment also modified the HCP to include Fish Trapping and Handling Guidelines under section 4.3.3 and NOAA Fisheries concurs with this minor modification. While there is no change in the 50-year term of this Permit, the Fish Trapping and Handling Guidelines will be revisited by a fresh section 10 consultation after five years. In order to adaptively manage this manner of take, that reinitiation of consultation will enable an informed decision by NOAA Fisheries and the City whether and how to continue with trapping and handling.

As per the terms of the unlisted species provisions of the IA, should any additional anadromous salmonid species that were unlisted at the time of finalization of the HCP become listed under the ESA, the new species will be added to this Permit according to provisions in section 12 of the IA.



Printed on Recycled Paper



If you do not comply with the terms and conditions of the permit, or if you cannot provide adequate funding for the HCP, the incidental take of PS chinook is not authorized. If you have any questions concerning the Permit, please contact Matt Longenbaugh of the Washington State Habitat Conservation Division, at (360) 753-7761, or matthew.longenbaugh@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Robert Lohn". The signature is fluid and cursive, with the first name "D." and last name "Lohn" clearly distinguishable.

D. Robert Lohn
Regional Administrator

Enclosure

cc: Tim Romanski, U.S. Fish and Wildlife Service

NOAA FISHERIES
PERMIT FOR INCIDENTAL TAKE OF ENDANGERED/THREATENED SPECIES

Permit Number: 1235

Expiration Date: December 31, 2050

Permit Holder:

City of Seattle
Seattle Public Utilities
710 2nd Avenue
Seattle, WA 98104

Principal Officer and Contact:

Chuck Clarke, Director
Phone: (206) 684-5850
FAX: (206) 684-4631

Reporting Requirements: As described in section 4.5 of the habitat conservation plan (HCP)

Authorization:

The City of Seattle - Seattle Public Utilities (City) is hereby authorized incidental take of threatened Puget Sound (PS) chinook salmon associated with its water supply and watershed management activities in western Washington State, subject to the provisions of the Implementation Agreement (IA) for the City of Seattle - Cedar River Watershed final Habitat Conservation Plan (HCP), the provisions of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. sections 1531-1543), the NOAA Fisheries regulations governing ESA-listed species permits (50 CFR Parts 222.301-222.309), and the conditions hereinafter set forth. In the event of a conflict between these general provisions and the provisions of the IA, the language of the IA shall govern. The period of the permit is 50 years.

Abstract:

The City of Seattle is authorized incidental take of Puget Sound (PS) chinook salmon (*Oncorhynchus tshawytscha*) associated with the City's water supply and watershed management activities in western Washington state, pursuant to section 10(a)(1)(B) of the ESA and the provisions of the IA for the City's final HCP. Currently, unlisted species that are adequately addressed by the HCP, and are therefore covered species, are coho salmon (*Oncorhynchus kisutch*), steelhead trout (*Oncorhynchus mykiss*), coastal cutthroat trout (*Oncorhynchus clarki*), and sockeye salmon (*Oncorhynchus nerka*), including kokanee. Incidental take for unlisted covered species will be authorized as appropriate under the provisions of Condition 8.

The City of Seattle - Cedar River Watershed HCP utilizes a combination of conservation measures that are expected to minimize and mitigate, to the maximum extent practicable, the

impacts of take of the anadromous fish species addressed in the HCP for watershed management, fisheries mitigation, and instream flows. These minimization and mitigation measures described in the HCP are the minimum level of conservation that the City has committed to implement. Several aspects of the HCP are subject to adaptive management. To ensure that the mitigation and minimization strategies are effective, the HCP incorporates a variety of monitoring components and supplemental studies that will provide feedback for adaptive management, and if needed, changes in the conservation measures. Three oversight committees are established to advise the City in implementing the HCP and related agreements for Instream Flows and Anadromous Fish. The HCP incorporates the Instream Flow Agreement for the Cedar River (IFA) and the Landsburg Mitigation Agreement for the Fish Migration Barrier at the Landsburg Diversion Dam (LMA).

Incidental Take

Covered activities, as defined in section 3.2 of the IA, that may cause incidental take of listed species will be conducted in locations described in sections 3.2 and 3.3 of the IA. The principal area in which covered activities will be conducted is the Cedar River Municipal Watershed, which encompasses approximately 90,545 acres in east King County, Washington.

The NOAA Fisheries anticipates that an undetermined number of PS chinook salmon may be taken as a result of covered activities over the 50-year life of the permit. The incidental take of this species is expected to be in the form of harm, harassment, kill and injury.

At the request of the City (letter received Aug 26, 2003, modifying section 4.3.3 of the HCP), trapping and handling of PS chinook is added to this Permit, per condition 12 below.

Conditions:

1. The provisions of this Permit may be amended as provided in section 12.2 of the IA.
2. The City may not transfer or assign this permit to any other person(s), as person is defined in section 3(12) of the ESA. This Permit is not in force or effective if transferred or assigned to any other person.
3. This Permit does not authorize the City or any other person to take ESA-listed species in the territorial waters of another country without the consent of that country. The City is responsible for securing consent from that country and complying with that country's appropriate laws.
4. A copy of this Permit, including the accompanying HCP and related agreements, must be available to City personnel at the City's on-site office in the Cedar River watershed. All applicable provisions of this Permit must be presented and clearly explained to all authorized officers, employees, contractors, or agents of the City conducting authorized activities.

5. The City, in effecting the take authorized by this permit, is considered to have accepted the terms and conditions of this Permit and to be prepared to comply with the provisions of this Permit, the applicable regulations, and the ESA.
6. As provided for in section 8.3 of the IA, upon request by NOAA Fisheries, the City must allow NOAA Fisheries or any other person(s) duly designated by NOAA Fisheries to inspect the City's records and facilities if such records and facilities pertain to (i) activities for which take of listed species is authorized by this permit, (ii) ESA-listed species covered by this permit, or (iii) NOAA Fisheries' responsibilities under the ESA.
7. The City is responsible for the activities of any individual who is operating under the authority of this Permit. Such activities include capturing, handling, releasing, transporting, maintaining, and caring for any fish authorized to be taken by this Permit.
8. The Permit will take effect for listed covered species on the effective date of a rule under section 4(d) of the ESA prohibiting take of the species. For unlisted covered species, the Permit will take effect upon the listing of a species as endangered, and for a species listed as threatened, on the effective date of a rule under section 4(d) of the ESA prohibiting take of the species.
9. Activities conducted pursuant to the Permit shall not jeopardize an ESA-listed species. In the event that after permit issuance, unforeseen circumstances arise or new information becomes available, and such circumstances or information lead NOAA Fisheries to believe that the effects of the City's activities on a covered species will be more severe than originally analyzed under the ESA section 7 intra-service consultation performed at the time of permit issuance, NOAA Fisheries shall proceed as follows. First, it shall utilize its resources to conserve the species. Second, it shall work with the City to voluntarily reduce the effects of covered activities on the species. Third, the occurrence of unforeseen circumstances or the new information shall trigger reinitiation of section 7 consultation on the Permit, and NOAA Fisheries shall document its analysis of the new effects in a biological opinion. Conservation efforts undertaken by NOAA Fisheries or the City shall be considered in the analysis. If reinitiation of consultation results in a finding that covered activities are likely to jeopardize the species, then NOAA Fisheries will (i) consult with the City to identify a reasonable and prudent alternative (RPA) and modify the HCP accordingly; or (ii) remove that species from the ITP, after which any prohibitions against take would apply.
10. This Permit does not cover activities that may affect any site, building, structure, or object that is included in, or eligible for inclusion in, the National Register of Historic Places until completion of any procedural steps that may be required under section 106 of the National Historic Preservation Act with regard to that activity.
11. Upon locating any dead, injured, or sick individuals of any listed species covered by this permit, the City shall, within three working days, notify NOAA Fisheries's Washington State Branch Office, Olympia, Washington (360)753-9530. Instructions for proper handling and

disposition of such specimens will be issued at that time. Care must be taken in handling sick or injured specimens to ensure effective treatment and care, and in the handling of dead specimens to preserve biological material in the best possible state. This condition does not apply to spawned-out carcasses.

12. This Permit authorizes trapping and handling of adult salmonids by the City and their contractors, for 5 years, as specified in section 4.3.3 of the HCP. Take from trapping and handling will be incidental to operations of the fish ladder at Landsburg. Approximately 20 adult PS chinook salmon are expected to be trapped and handled each year for the next 5 years. Injury and mortality rates from trapping and handling are expected to be extremely low to none. Over all of the next 5 years, cumulative injury and death may occur for an estimated one fish out of 100 trapped. After five years, the Fish Trapping and Handling Guidelines will be revisited and a fresh section 7(a)(2) Opinion will be prepared before deciding whether or how to continue with trapping and handling.

13. The fee in 50 CFR Section 222.307(d)(5) to cover the cost of issuance of this Permit has been waived.

Issued by :

D. Robert Lohn

Date:

9/24/03

D. Robert Lohn

Regional Administrator